WHAT "CHINESE EXCLUSION" REALLY MEANS

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By TSO-CHIEN SHEN

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PREFACE

Forty-one years ago, the late Chinese Minister Wu Ting Fang said in an address to the Students' Lecture Association and the Good Government Club of the University of Michigan:

> "The Chinese immigration question is a complicated one. To solve it satisfactorily is not easy. It is necessary to look deeply into the subject and not allow one's self to be swayed by prejudice and bias. Prejudice is the mother of mischief and injustice, and all intelligent men should guard against it. In order to get at the truth it is necessary to study the facts of the case and not to jump at any conclusion, however plausible it may be. Let all preconceived notions be laid aside, and pains be taken to weigh all the arguments pro and con. I am sure that, with the intelligence of the American people and their sense of fair play, I feel confident they will conscientiously do what is right."

In this study I wish to present to the American public an historical account of Chinese immigration to the United States and the subsequent problems which arose during the last ninety-five years, with a view to realize a better understanding and to facilitate an earlier settlement of the question. In these critical times the international situation calls for high statesmanship on the part of both China and the United States to promote genuine progress toward a better world and the foundation of lasting world peace. The forces of destruction which now threaten the freedom loving peoples of the world use as their weapon the evils of racial discrimination which still persist in the ranks of the Democracies. An outstanding example is the Chinese Exclusion Acts.

Since this study is confined to the background of Chinese exclusion, the administration of the law and the present treatment of the Chinese have not been dealt with; however, I attach two memoranda of typical cases as appendixes.

For whatever merit this booklet may possess, I wish to express my gratitude to Mr. Chih Meng, Director of the China Institute of America, for his friendly encouragement. Gratitude is also due to Professor Joseph P. Chamberlain of Columbia University, Professor Quincy Wright of the

University of Chicago, and Professor Joseph P. Kelly of the Law School of the University of Santa Clara, California, who supplied valuable suggestions on the memorandum on the admissibility of Chinese teachers.

The Honorable Yi-seng Kiang, Chinese Consul at Seattle, and the Honorable Gung Hsing Wang, Chinese Vice-Consul at New Orleans, have also rendered constructive opinion and encouragement. Acknowledgement is tendered to Mr. Henry S. Evans, Midwest Bureau of the Chinese News Service, who assisted in completion of the manuscript and final proof reading.

TSO-CHIEN SHEN

Chicago
December, 1942.

ERRATA FOR

WHAT "CHINESE EXCLUSION" REALLY MEANS

Page 5—Third line from the bottom should read:

" . . . Mr. Chih Meng, Director of the China Institute *in* America . . . "

Page 18—Note (4), first line should read:

" . . . (4) Yan Phou Lee, 'The Chinese Must *Stay*' . . . "

Page 21—Second line from the bottom should read:

" . . . Chinese to the United States, *expressed willingness to* negotiate . . . "

Eleventh line in second paragraph should read:

" . . . could *be* restricted . . . "

Page 24—Third line of last paragraph:

Word "interests"—second "e" missing.

Page 25—First paragraph, end of fourth line should read:

" . . . and immigration shall not *be* . . . "

Page 51—The title should read:

MEMORANDUM OF THE ADMISSIBILITY OF CHINESE TEACHERS TO *THE* UNITED STATES

Page 53—Lines of the two quotations from the Immigration Act of 1924 were interchanged by error. The first quotation should read:

"No alien ineligible to citizenship shall be admitted to the United *States unless such alien is admissible as a non-quota immigrant* . . . "

The second quotation should read:

"An immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United *States has been, and who seeks to enter the United States solely for* the purpose of, . . . etc. . . . "

Page 54—In line 7 the case should be quoted as:

" . . . Chuang Sum Shee vs. Nagle, 268 U. S. *336* . . . "

(Words italicized in quotations from text indicate corrections.)

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WHAT "CHINESE EXCLUSION" REALLY MEANS

I.

EARLY CHINESE LABORERS IN CALIFORNIA

On February 2, 1848, the brig, *Eagle,* arrived at San Francisco from Hongkong with two Chinese men and a woman. They came over in the employ of Mr. Charles V. Gillespie, an American long resident in China.[1] The trio was said to be the first Chinese in California.[2] Incidentally the arrival of the Chinese coincided with the two significant economic and political changes on the Pacific Coast — the discovery of gold in the Sacramento Valley and the annexation of California to the United States. Since these events and the increasing immigration of Chinese in the following years, the Chinese have played an important part in the development of California.

The news of the discovery of gold reached Hongkong in the spring of 1848 and created much excitement there. Masters of vessels anxious to employ their crafts in profitable trade afforded every facility for emigration, distributing placards, maps and pamphlets with highly colored accounts of "mountains of gold in California", and reaping enormous profits as the demand for passages and freight increased. In 1850 forty-four vessels left Hongkong for San Francisco with four hundred and fifty Chinese passengers, and by the end of 1852 it was estimated that there were 25,000 Chinese in California.[3]

In the early fifties the Chinese were warmly welcomed, not only because of their valuable service at that period, but also for the picturesque and dignified element which they added to society. In

(1) H. H. Bancroft, *History of California,* San Francisco, 1890, vol. VII, p. 336; R. Guy McClellan, *The Golden State,* 1872, pp. 421-22.

(2) Before 1848 there were a few Chinese in the Eastern states including Yung Wing, a pioneer Chinese student, who arrived at New York from Hongkong in 1847 and was graduated from Yale University in 1854.

(3) Mary R. Coolidge, *Chinese Immigration,* New York, 1909, p. 17.

August of 1850, both in a memorial service of President Taylor and in the celebration of the admission of California into the Union, the "China boys" were presented publicly by Mayor Geary of San Francisco and were called "brothers and equals."[4] In 1852 Governor McDougal of California recommended a system of land grants in order to induce the further immigration and settlement of Chinese, and praised them as "one of the most worthy of our newly adopted citizens."[5]

The warm reception that was offered to the Chinese in California in the early fifties was, however, not inspired by an ostentatious gesture of international amity; rather, it was engendered by dire necessity. Before 1869 California was almost entirely isolated from the eastern part of the United States. The sea which laves her shores has no connecting strait with the Atlantic until one has traversed the whole extent of the two continents to the southward. The deep sea voyage was particularly long and hazardous. It is true that a railroad was built through the Panama Isthmus in 1848, and that the steamship lines on the two oceans enabled passengers to reach California by comparatively quick transit; still this route was a very expensive one which was practically beyond the reach of common immigrants.[6]

More difficult and hazardous was the overland travel. Settlements were few in the vast tract west of the Missouri. The Rocky Mountains were uninviting and inhospitable, and the great snow capped line of Sierra Nevada frequently proved impassable to the weary and footworn adventurers.

Under these circumstances, immigrants to California were the strong and adventurous, who possessed, or managed to raise money enough to carry them far beyond the limit possible to the newly arrived immigrants. Such men as these, however hard and adventurous, had no intention of working by the day for wages even a good deal above the Eastern standard — they meant to make their fortune, "strike it rich". From the beginning, then, California presented the anomaly of almost continuous scarcity of day labor while at times being overstocked with capable men out of employment.

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(4) *Ibid.*, p. 22; Bancroft, *op. cit.*, vol. VI, pp. 124-130.

(5) *Ibid.*

(6) George F. Seward, *Chinese Immigration in Its Social and Economical Aspects*, N. Y., 1881, pp. 15-16.

The potential resources of California were rich, but the region was too isolated, too remote, and too difficult of access to receive any appreciable increase in population. Without human labor all of her developments would remain only a great possibility of the future. From the outset, therefore, the enterprising leaders of California looked forward to the time when the iron horse should surmount those mountain ranges, permit them to bring in Eastern laborers and expand their markets. The day came sooner than they had expected and the Chinese were chiefly instrumental in bringing about the result.

When the Central Pacific Railroad started construction, circulars were sent to every post-office asking for several thousand white laborers and offering high wages for that class of labor, but only eight hundred could be found.[7] Most of these were actually prospectors and speculators, "down on their luck," who had no intention of being permanent day laborers, but meant to accumulate a "stake" and to quit the job at the first chance. Some of them would stay a few days, and some would not go to work at all. "Some would stay until pay day, get a little money, get drunk and clear out." Properly speaking, before 1869 there was no white laboring class in California, and those driven by misfortune to work temporarily were, therefore, discontented, incompetent, and unreliable.[8]

Railroad construction began in 1863 and in a year the work came to a stand-still. Construction officials insisted that they were opposed to the use of Chinese labor, but competition with the Union Pacific and inability to procure white labor compelled them to employ the Chinese.[9]

In 1864, the working force on the Central Pacific Railroad consisted of 4000 men of whom more than 3000 were Chinese. In order to complete the railroads in the time specified by Congress, a very large force of laborers was needed. Since very few white men were to be had at any price and not even enough Chinese were available, the Central Pacific sent an agent to China in 1868 and engaged several thousand Chinese there, prepaying their passage and other expenses. Each Chinese signed a promissory note for $75 in gold coin, payable on demand, secured by the endorsement of friends in China and agreed

(7) 44 Congress, 2d Session, (1876-77) *Senate Report,* "Report of the Joint Special Committee to Investigate Chinese Immigration," vol. 3, No. 689, pp. 666, 723 (hereafter cited only as *Senate Report* No. 689).

(8) *Ibid.*

(9) *Ibid.,* p. 75.

to pay it in regular instalments for seven months, from a guaranteed wage of $35 per month.[10] Later the Southern Pacific lines, especially in California, were built almost entirely with Chinese labor.[11]

While the political, economic and military advantages to the Union of the Pacific railroads were obvious,[12] the material advantage of the Southern Pacific to the state could not be overestimated. California lacks water communication, and her physical features are such that transportation is difficult by any other means than railroads. Before the construction of the Southern Pacific, a large part of the state was difficult of access and land was of little value. The lateral roads of the Southern Pacific advanced the value of land from 200 to 1000 per cent and opened the territory for other developments.[13]

The fertile soil and mild climate of California are particularly favorable to agriculture. Up to 1876, however, but 5,000,000 acres had been brought into cultivation of any kind. The rest was so-called tule land which was either over-flowed by the tide or subject to inundation by the winter freshets. The problem of California was, therefore, to work out the means by which high lands might be irrigated and lower lands protected from overflow. Several companies were organized to undertake the reclamation, but the work was considered hazardous and unhealthy, especially the building of levees that were in the malarious districts. "It is a class of work that white men do not like" even at exorbitant wages; therefore, Chinese were employed for all reclamation work.

The Chinese did many kinds of work. Perhaps the most valuable services they have ever rendered to the State of California, as well as the United States, are railroad construction and swamp land reclamation. Without Chinese labor California could not have been developed until much later. The value of Chinese labor is not to be measured in terms of money; however, if a yardstick is required, I think no person is more competent to give the answer than Mr. B. S. Brooks, a leading pioneer who settled in San Francisco in 1850 and "saw California grow." In the "Opening Statement and Brief on the Chinese Question"

(10) Coolidge, *op. cit.*, pp. 52; 63.

(11) *Senate Report* No. 689, *op. cit.*, pp. 599-600, 667, 674, 689.

(12) During the Civil War California had threatened to sever her connection with the Union.

(13) Testimony by David D. Colton, Vice-President of the Southern Pacific, *Senate Report* No. 689, p. 599.

before the Joint Special Committee of Congress to Investigate Chinese Immigration in 1876 at San Francisco he declared:

> "I asked a former Surveyor General of this State to estimate the increase in the value of the property of this State created by Chinese labor in the building of railroads, and in reclaiming tule lands alone, and the amount he gave me is $289,700,000. This is the wealth which a hundred thousand Chinese have added to California. It is wealth owned, held and enjoyed by white men, and not Chinamen. The Chinamen do not carry it away with them; they could not even if they wished to do so."[14]

Up to 1862 about 27,000 Chinese (approximately 50% of all Chinese in California) were engaged in mining. They were allowed to take up only poor and abandoned claims, the so-called worn-out mines, and as day laborers in the mines they received $1.00 or $1.25 a day, about half the pay of white men. The other 27,000 Chinese were engaged in trade (chiefly among themselves), truck-gardening, farm labor, washing and household services, fishing and common labor; only a few hundred were engaged in mechanical work. About three thousand were drafted into the manufacture of shoes, slippers, cigars, woolens, jewelry, and blacking. In the towns they became gap-fillers.

In the mines Chinese received vile treatment from white miners, hoodlums, as well as tax collectors. The state had a discriminatory Foreign Miner's License Tax of four dollars per month against the Chinese. The collectors often took advantage of their position and forced the Chinese to pay several times more and sometimes robbed them in the guise of taxation. The commonest form of attack was to drive the Chinese from any claim that seemed worth a white man's picking; sporadic and individual cases were numerous, but at times whole mining communities rose and drove the Chinese away, sometimes with warning, more often with violence. During the decade following 1852 the number of Chinese robbed, maltreated, despoiled, and wantonly slaughtered mounted to thousands; cold blooded murder of the Chinese in mining districts became almost a daily occurence.[15] The complaints of injury and oppression could not be heard in the courts because there was a law in California that Chinese could not

(14) *Ibid.*

(15) William Speer, *The Oldest and the Newest Empire,* S. F. 1870, pp. 335-339; Coolidge, *op. cit.,* pp. 255-257.

testify for or against white men.[16] After 1862, the Chinese gradually left the mines and went into other employment; most of them went to work on the railroads.

After the Pacific Railroads were completed in 1869, nearly ten thousand Chinese and white laborers were discharged, most of whom flocked to San Francisco in search of work. Meantime organized labor began to gain political influence and the Chinese found great disfavor among the laboring class. Outside of the laboring class, however, Chinese were generally welcomed in their employment, not because of their low wages, but because of their stability, reliability, adaptability and sobriety, and also because of the scarcity of competent white laborers.

It is true that the wages of Chinese laborers were lower than white men in California. Working on the Central Pacific, the Chinese were paid $31 to $35 a month and they boarded themselves, while the white laborers were paid $45 and board.[17] In farming, the wages of Chinese labor ranged from $15 to $20 per month with board, or $30 per month without board; white men were paid from $30 to $40 with board.[18] However, it should be pointed out that the wages that the Chinese were receiving were comparable to the Eastern standard, and sometimes even higher than the Eastern wage scale. In the seventies, the farm hands of Illinois, Indiana and Minnesota were generally paid $20 a month with board,[19] but white labor in California was not satisfied with $35 a month, which was an exorbitant price for the farmers to pay. A pioneer farmer in California pointed out "A farmer cannot survive on a payment of a minimum of $25 a month and board."[20] In cigar manufacture, the Chinese were receiving $6.00 to $6.50 per 1000 as against $4.00 per 1000 paid in the East.[21]

In the seventies the industries in California were only in their infant stage of development. After the transcontinental railroads were completed the markets were opened to eastern competition. It is no

(16) *California Statutes,* 1850, p. 455; *People vs. Hall,* 4 Cal. 399. The law was voided by the Civil Rights Act and the 14th Amendment after the Civil War.

(17) *Senate Report* No. 689, *op. cit.,* p. 75.

(18) *Senate Report* No. 689, pp. 186, 440, 557, 768.

(19) Seward, *op. cit.,* p. 55.

(20) Testimony by Col. Hallister, *Senate Report* No. 689, p. 768.

(21) Coolidge, *op. cit.,* p. 366.

exaggeration to say that no industry could survive while paying the wages of the West in competition with the East. For instance, as early as 1867, the woolen industry found that the high price of labor made it impossible to compete with Eastern mills in many lines of production. But the superior quality of California wool and the employment of Chinese enabled the industry to survive. It was reported that the five mills in San Francisco and Marysville had not paid any dividends since they were founded in 1860 until the Chinese were employed.[22] In 1880 the Pacific Woolen Mills shut down until the court decided that the clause of the Second Constitution of California forbidding corporations to employ Chinese was unconstitutional.[23]

In 1885 the White Labor League of California asked the cigar manufacturers to replace Chinese makers with white men in order to give work to the unemployed. When the terms were agreed upon between the League and twenty-one manufacturers, it was at once discovered that there were very few cigarmakers out of employment in California and the League sent East for men. Among five hundred imported Eastern cigarmakers, two hundred returned to the East shortly, many accepted higher wages in the fruit districts and other industries, and the remainder demanded an increase of wages higher than the New York union price that was agreed upon. The manufacturers were forced to re-employ Chinese.[24]

In 1886, the California Bureau of Labor reported an investigation made at the request of the State Horticulture Society as to whether enough white laborers of equal efficiency with the Chinese could be supplied for the fruit harvest of that year. Commissioner Enos roughly estimated the number of Chinese employed in fruit harvest at 30,000, or seven-eighths of all labor on farms. The employment agent for white labor testified that the average number of unemployed in San Francisco was 6,800; that they could supply from 2,000 to 10,000 on demand and would agree to import from Europe and the East at $20 to $30 per month. He could find more, enough to replace all Chinese in sixty days to one year, but white labor must have good food and accommodations and kind treatment. The employment agent for Chinese testified that the Chinese constituted seven-eighths of all farm

(22) *Alta,* August 16, 1868.

(23) Coolidge, *op. cit.,* p. 374; 1 Fed. 481.

(24) *Second Biennial Report of California Bureau of Labor,* 1885-6, pp. 438-442.

labor at an average of $20 per month without board; that they had an advantage over white labor in their previous agricultural experience in China; that white men would not work for $30 per month and board; that Chinese were industrious, reliable, honest, docile, cleanly in habit and able to board themselves and live decently in accommodations which white men would not accept.

From this report it appears that there was not enough white labor in California to replace the Chinese, and even if the white laborers could be imported from Europe and the East, the price was so high that no fruit culture could carry on with profit or survive. Mr. Otis Gibson in his work *The Chinese in America* pointed out:

> "Probahly not a single strawberry ranch in the State is carried on, or could be carried on, with any profit, without the employment of Chinese labor. This is a kind of industry in which they excel all competitors. Yet with this industry carried on almost exclusively hy Chinese cheap labor, our strawherries cost more hy the pound than in New York, Philadelphia or Chicago. If our producers had to pay white laborers two dollars a day for far less efficient service than the Chinamen give for one dollar, or one dollar and twenty-five cents a day, who could afford to eat the fruit when brought to market. As it is, even employing Chinese labor, our producers pay as much a pound or basket for picking as is paid by the producers in New York, Delaware or Maryland."[25]

It has been shown in the preceding pages that the so-called Chinese cheap labor was not really the cause of the labor discontent in California. The wages of Chinese labor were comparable to those paid in the Eastern states. It was the Eastern competition, rather than Chinese competition, that set the standard of wages and of success. Furthermore, Chinese labor seldom replaced white labor in California. Except during the depression years of 1870 and 1871 there were no evidences that white laborers in California were unable to find a job, except "the hoboes and tramps that float around the country and will not accept steady employment at any wages."[26]

After the passage of the "Chinese exclusion act" of 1882, the immigration of Chinese from China was stopped, and because of increasing hostility in California, many Chinese laborers either went back to China or went to other parts of the country. Some twenty thousand

(25) Otis Gibson, *The Chinese in America,* Cincinnati, 1879, p. 98.

(26) Los Angeles *Times,* March 2, 1902.

Chinese visiting China temporarily were refused permission by the Scott Act of 1888 to return. After 1886 California began to cry "labor famine" every season. In harvest young boys and girls were employed in picking, packing, and canning in the fruit districts. The opening of schools had to be postponed because the growers could not harvest the crops on which the community chiefly depended without the help of children. At times newspapers became irascible and outspoken on the effect of the "Chinese exclusion." For instance, the San Francisco *News Letter* in an editorial on February 16, 1902, said:

> "Will they (the demagogues) tell us where we are to procure labor for our orchards and ranches? . . . They are perfectly aware that every year thousands of dollars' worth of fruit and grain spoil because help cannot be procured to harvest it. Yet while this condition exists the town is full of men, . . . big, husky men, more than able to work. The country is full of them camping in creek beds, beating the railroad trains, working only when absolute necessity demands. The Chinese are the only people who will do ranch work faithfully. They are the only ones who can be depended upon to do housework . . . Native Americans do not seek the work the Chinese are after."

From the facts which have been presented it must be fairly concluded that the anti-Chinese agitation in California never has been really a question of cheap labor competition with white men, but of self-preservation engendered by the pioneer spirit of white domination. It must be recognized that more than one hundred thousand Chinese, who were induced to come in times of need and driven away when their usefulness diminished, have played a major part in the development of California. They have not enjoyed the fruit, but their blood and sweat which were chiefly responsible for the State of California as she is to-day, cannot be easily overlooked by the historians.

II.

THE DEVELOPMENT OF ANTI-CHINESE POLITICS

William A. Dunning once said that men are influenced, not necessarily by what actually happens, but by what they think or understand has happened, and that frequently erroneous ideas and beliefs have had a far greater causal relation to subsequent events than the actual facts.[1] As has been demonstrated in the preceding pages, it was the Eastern competition rather than Chinese competition that caused the labor discontent in California. But during the climax of anti-Chinese sentiment all social evils were attributed to the Chinese. As an example of the unreasonableness of alarmists, a writer blamed the Chinese that their industry had enhanced the value of land in California. The form of argument was that the value of land had increased so much through the employment of Chinese labor that the land owners were no longer willing to sell out to small farmers; hence, if the Chinese had not worked on the land, the owners thereof would have been glad to sell, white men would then have bought the land in small lots, and the State would have been saved![2]

Another charge was made by the California Legislature in 1876 that in a given year the Chinese in California had sent out of the country $180,000,000. According to the Customs House figures computed by Mary R. Coolidge, there were 111,971 Chinese on the Pacific Coast in 1876.[3] If the estimate made by the Legislature was accurate, each Chinese would have earned at least $1,675 a year. Then how could it be said that Chinese labor was "cheap labor"?[4]

However, such charges as these, falsified and exaggerated, would

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(1) "Truth in History," *American Historical Review, XIX,* January, 1914, pp. 217-229.

(2) William B. Farwell, "Why the Chinese Must Be Excluded," *Forum,* Octoher, 1888, pp. 196-203.

(3) Coolidge, *op. cit.,* p. 498.

(4) Yan Phou Lee, "The Chinese Must Say," *North American Review,* April, 1889, pp. 476-485. He assumed the numher of Chinese in California in the seventies to he 150,000, which was hased on the extreme estimate of the number of Chinese in California. The figure is corrected here.

have had no great effect against the Chinese had it not been for the peculiar political situation which developed.

Before 1869 the anti-Chinese agitation though it had been hostile and sometimes violent had been, nevertheless, sporadic and fostered by individuals. After the completion of the Pacific Railroads in 1869 the anti-Chinese movement passed into a new phase. Contrary to general expectation, the completion of the railroads, instead of bringing in a general era of prosperity, exposed California markets to Eastern competition which resulted in a great social and economic panic in 1870-71, and again in 1876. Great unrest and discontent prevailed among the laboring class, and found expression in the sudden rise of the Workingmen's Party and in the riots of the Sand-lotters, who attributed the economic disturbance to the Chinese. During this period the political parties in the state were so nearly equal in strength that, except for the first six years of statehood, no political party was able to elect its candidate for governor more than twice in succession, and often by majorities of less than one thousand votes.[5] Under these circumstances the labor forces, now organized and keenly alive to the situation, held the balance of power. Political leaders, to whom convictions on the merits of Chinese immigration were secondary to the winning of election, found themselves entirely helpless to ignore the labor demands.[6] In this period the influence of the laboring class in state politics was so strong and unyielding that no holder of, nor aspirant to, a public office dared say a word in favor of Chinese for fear of dire consequences; on the contrary, Republicans as well as Democrats seized every opportunity to make public profession against the Chinese in order to catch the labor vote.[7]

At first the anti-Chinese agitation in California was expressed in the form of a series of discriminatory state laws and city ordinances of

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(5) Elmer C. Sandmeyer, *The Anti-Chinese Movement in California,* The University of Illinois Press, 1939, p. 41.

(6) In the election of 1875, the Republicans were silent on the Chinese issue in their campaign, hut the Democrats demanded the ahrogation of the Burlingame Treaty which allowed free immigration of Chinese. The result of this election seemed to have so deeply impressed the Repuhlicans that in the convention of the following year they adopted a vigorous anti-Chinese plank.

(7) Sidney L. Gulick, *American Democracy and Asiatic Citizenship,* New York, 1918, pp. 34-35.

San Francisco against the Chinese.[8] But most of the laws were voided by the courts as unconstitutional or violating the Burlingame Treaty with China. The anti-Chinese leaders realized that the authority to control immigration did not rest with the state and that effective means for excluding Chinese must come from the federal government. However, the anti-Chinese agitation was primarily a local issue of California, and to a less degree other Pacific Coast states, which heretofore had had relatively little influence in national affairs. But in the seventies, due to the rapid increase in population resulting from railroad construction, California, as well as other Pacific Coast states, emerged to a position of political importance in the nation. When the presidential campaign opened in 1876, California politicians realized that for the first time in history the national political situation was in their favor. In the spring of 1876 the numerous anti-Chinese clubs combined under the name of the Anti-Chinese Union, with the purpose "to unite, centralize and direct the anti-Chinese strength of our country."[9] The Union carried on its list as vice presidents: United States senators, congressmen, and many prominent politicians of the state. The anti-Chinese movement in California was no longer confined to the laboring class. Under the pressure of local clamor on the eve of the presidential election of 1876 Congress sent a Joint Special Committee to Investigate Chinese Immigration to San Francisco in order to allay the undue expression of anti-Chinese feeling.

Meantime the anti-Chinese forces in California realized that, in order to secure Congressional action, the rest of the country must be convinced of the necessity of excluding the Chinese. A propaganda campaign was launched by the State Senate which appointed a Special Investigating Committee to inquire into the Chinese situation in the state, and to prepare a memorial to Congress.

In the Memorial to Congress three measures for "relief" were recommended: cooperation with Great Britain to secure the complete prohibition of the traffic in men and women, through frank negotiation to secure the abrogation of all treaties allowing the immigration of

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(8) Foreign Miner's License Tax, 1852; Alien Passenger Tax, 1852; Capitation Tax, 1855; Police Tax, 1862; Fisbing License Tax, 1860; Excluded from testifying for or against white men in court, 1852; Separated from public scbools, 1860; Forbidding to land upon Pacific Coast, 1858; Cubic Air Ordinance, 1870, "Queue" Ordinance, 1871; Exhumation Ordinance, 1876; etc.

(9) Sandmeyer, *op. cit.*, p. 57.

Chinese to the United States, and for immediate relief, legislation by Congress to limit this immigration to ten on any one vessel.[10]

Apparently the committee was not content with sending a memorial to Congress. It proceeded to draw up "An Address to the People of the United States Upon the Evils of Chinese Immigration." And in August, 1877, the committee published and distributed to members of Congress, Governors of states and the newspapers, more than ten thousand copies of the document of three hundred pages. As might have been expected from the fact that it was published in the midst of the agitation of the Workingmen's Party, it was obviously intended to satisfy the workingmen of the state and to impress the reading public and Congress with the necessity of immediate federal legislation.

As a result of these developments of the anti-Chinese movement a so-called Fifteen Passenger Bill was passed by Congress in 1879, limiting any one vessel bringing Chinese to the United States to fifteen at one time.[11] But this act was vetoed by President Hayes as a violation of the most favored nation clause of the Burlingame Treaty of 1868. However, under the apprehension of the political and social unrest of the Western states on the eve of the presidential election of 1880, and the threat of Congress that some other act overriding the President's veto might be passed, the federal government was compelled to search for some measure whereby the immigration of Chinese could by restricted and legal justification could be found. Meanwhile the State Department, recognizing that, the right of Chinese immigration being guaranteed by the Burlingame Treaty, no remedial statute could be enforced satisfactorily without the cooperation of China, had already instructed Minister George F. Seward at Peking to bring to the attention of the Chinese government the apprehension of the Pacific Coast, to ascertain the facts with regard to the immigration of "contract laborers, paupers, and criminals," and the measure it might be willing to undertake in view of existing treaty stipulations.[12] Prince Kung, when approached by the American Minister on the subject of Chinese to the United States, and for immediate relief, legislation by negotiate for the exclusion of "criminals, lewd women, diseased per-

(10) California Senate, *Chinese Immigration* (1876), p. 59-65.

(11) 45 Congress, 3rd session, (1878-79) *House Report,* vol. 1, No. 62, p. 1.

(12) 47 Congress, 1st session (1881-82), *Senate Executive Documents,* vol. 6, No. 175, pp. 4-6.

sons and contract laborers" as a measure of friendship and good will.[13] Under these circumstances the American government appointed a commission to proceed to China, and undertake the negotiation of a treaty which would permit the American government to restrict the immigration of Chinese laborers. As a result of the negotiations the Treaty of 1880 was concluded at Peking, granting the United States government the right to regulate, limit or suspend the coming of Chinese laborers.

(13) *Ibid.*, pp. 10-11.

III.

THE TREATY OF 1880

In view of the fact that the first "Chinese Exclusion Law" passed by Congress was ostensibly in execution of the Treaty of 1880, and of the fact that a few years later there came to be a wide divergence of opinion with regard to the interpretation of the treaty, it is of the utmost importance to make a brief review of the record of the negotiations leading to it.

The American Commission arrived in Peking on September 27, 1880. At first it submitted to the Chinese government a draft of its propositions:

> "Article 1. That, reciprocally, all citizens of either country visiting or residing for the purpose of trade, travel, or temporary residence for the prosecution of teaching, study, or curiosity, shall enjoy all the rights, privileges, immunities, *et cetera*, of the most favored nation.
>
> "Article 2. That whenever the coming of Chinese laborers to the United States or their residence therein threatened to affect the interests of that country or to endanger the good order of any locality thereof, the government of the United States may regulate, limit, suspend or prohibit such coming or residence after giving timely notice to China; and the words 'Chinese laborers' as herein used shall signify all immigration other than teaching, trade, travel or curiosity.
>
> Article 3. That all Chinese residents in the United States shall receive the protection guaranteed by existing treaties."[1]

In reply to these propositions the Chinese memorandum stated: that article 1 was the unnecessary re-enactment of certain sections of the existing treaties, that in article 2, to make the words "Chinese laborers" include all persons except as go thither for the purpose of trade, teaching, study, travel or curiosity, was not in accord with the spirit of existing treaties and would, in practical operation, meet with many difficulties, that the word "regulate" was a general expression

(1) 47 Congress, 1st session, (1881-82) *House Executive Documents*, vol. 1, "Foreign Relations," No. 1, pt. 1, p. 176.

referring to the other terms "limit" and "suspend," and that as for the word "prohibit," China would assuredly find it difficult to adopt.[2]

After an exchange of views on points of difference, the Chinese Commissioners submitted to the United States Commissioners a treaty project which would limit, but not prohibit, Chinese immigration, which would apply only to actual laborers and not impose disabilities on any other class, all other classes were to be allowed to come and go with perfect freedom, and all Chinese in the United States were to be protected as the citizens of the most favored nation.

The project counter to this, drafted by the American Commissioners, repeated the words "limit, regulate, or suspend," but omitted the word "prohibit"; defined laborers to include all Chinese who did not come to the United States for "trade, travel, mercantile pursuits, study or curiosity."

Considerable discussion thereupon arose over the status of "artisans," China desiring specifically to authorize their entry, while the United States Commissioners insisted that artisans were inadmissible. In a written memorandum the United States Commissioners stated that the word "prohibit" was removed with the distinct understanding that the right of the United States to use the discretion in a friendly and judicious manner; that they must insist upon the definition of Chinese laborers as including artisans, for it was the very competition of skilled labor which had caused the embarrassment and popular discontent in the cities, and that the project must apply to the whole United States and not merely to California.[3]

After these exchanges an agreement was reached on November 6, which resulted in the Treaty of 1880. Articles I and II are as follows:

> **"Article I. Whenever in the opinion of the government of the United States, the coming of Chinese laborers to the United States, or their residence therein, affect or threatens to affect the intersts of that country, or to endanger the good order of said country or any locality within the territory thereof, the government of China agrees that the government of the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable and shall apply only to Chinese who may**

(2) *Ibid.*

(3) *Ibid.*

go to the United States as lahorers, other classes not being included in the limitations. Legislation taken in regard to Chinese lahorers will be of such a character only as is necessary to enforce the regulation, limitation or suspension of immigration, and immigration shall not suhject to personal maltreatment or ahuse.

"Article II. Chinese suhjects, whether proceeding to the United States as teachers, merchants, or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States shall he allowed to go and come of their own free will and accord, and shall he accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens of the most favored nation."

In view of the deliberation relating to the making of the treaty, it appears that the American Commissioners went to China with the intention of securing some discretionary control of Chinese immigration, and that the Chinese were willing to grant this to some extent. As a result of mutual concession the definition of "laborers" previously insisted upon by the United States Commissioners had been dropped; on the other hand the exception of artisans from the labor class as urged by the Chinese Commissioners was also abandoned. These mutual concessions were made not to the true interest of either government, but, rather, as a result of the circumstances under which both governments were apprehensive that Congress might be forced to abrogate the Burlingame Treaty.

IV.

CHINESE EXCLUSION LEGISLATION

In pursuance of the treaty stipulations the so-called Chinese exclusion act was passed by Congress on May 6, 1882, whereby the coming of Chinese laborers to the United States was suspended for ten years. It also provided that Chinese persons, other than laborers, who might be entitled to enter the United States, should be so identified "by a certificate issued under the authority of" the Chinese government. It forbade admission of Chinese to citizenship. Finally, the words "Chinese laborers" were defined as including "both skilled and unskilled laborers and Chinese engaged in mining."[1]

The Act of 1882, though it was amended in 1884, because it was full of ambiguities and omissions, was found unsatisfactory in its enforcement. The California newspapers and politicians charged that the number of Chinese was increasing rather than decreasing. They asserted that many Chinese who came under the provision of "merchants" or "traders" were believed by the customs collectors to belong to the class of laborers;[2] that return certificates were found in the hands of the wrong persons; that forged certificates were for sale in Chinatown, San Francisco, and were used with the connivance of immigration officers.[3]

Meanwhile, the hostile feeling of the Pacific Coast people also found undue expression in frequent acts of violence. In 1885, riots broke out at Bloomfield, Redding, Boulder, Cleek, Eureka, and other towns in California, involving murder, arson, and robbery. Fifty Chinese were known to have suffered death at the hands of American mobs, and one hundred twenty were wounded or robbed of all their property. Thousands were driven from their homes.[4] At Rock Spring, Wyoming, twenty-eight Chinese were killed, fifteen seriously injured

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(1) 22 *Stat. L.*, 58; 23 *Stat. L.*, 115.

(2) 48 Congress, 1st session, (1883-84) *Senate Executive Documents,* vol. 4, No. 62, pp. 5-12.

(3) 49 Congress, 1st session, (1885-6) *Senate Executive Documents,* vol. 7, No. 103, pp. 3-4.

(4) William Taft, *The United States and Peace,* N. Y. 1914, pp. 59-61; Gulick, *op. cit.,* pp. 37-38.

and property to the amount of $140,000 destroyed.[5] In San Francisco the anti-Chinese agitation was aggravated by the struggle already existing there between employers and Trade Unions and by the excitement incidental to the municipal election of 1885 and the state campaign of 1886. On the eve of the gubernatorial election of 1886, a series of anti-Chinese meetings was staged which ended in a state convention. In a "memorial" to Congress, the convention demanded that the United States absolutely prohibit the "Chinese invasion."[6] On the eve of the presidential campaign of 1888, the so-called Scott Act was passed by Congress.

Under the Scott Act, it was made unlawful for any Chinese laborer "who shall at any time heretofore have been, or who may now or hereafter be, a resident within the United States, and who shall have departed, or shall depart therefrom, and shall not have returned before the passage of this act, to return to, or remain in, the United States," and all certificates of identity under section 4 and 5 of the Act of 1882 were declared to be void, and the issuance of such certificates in the future was forbidden.[7]

At the time the Scott Act was passed, there were over twenty thousand Chinese who had temporarily left the United States armed with certificates entitling them to return, and six hundred of these were on the ocean on their way back to the United States. All were denied admission. Many of these had families and property interests of various sorts in the United States.[8]

After the passage of the Scott Act Chinese Minister Chang Yen-Hoon made a stream of ineffectual protests. He said that it was a plain violation of the existing treaty which did not give the United States the power to restrict the free exit or return of Chinese laborers already in the United States, that the Treaty of 1880 had been brought about by the express solicitation of the United States, that the action of Congress was not justified by its conduct toward the other nation, and that it

(5) 49 Congress, 1st session, *House Executive Documents,* vol. 37, No. 102, pp. 11-50.

(6) 49 Congress, 1st session, *Senate Miscellaneous Documents,* vol. 5, No. 107.

(7) 50 Congress, 1st session, *Congressional Record,* vol. 19, pt. 7, pp. 6569-73, 7746ff; 25 *Stat. L.* 476, 477.

(8) Cf. The correspondence between Chinese Minister Tsui Kwo Yin and Secretary of State Blaine, 51 Congress, 2nd session, (1890-91) *House Executive Documents,* vol. 1, No. 1, pt. 1, pp. 119-122; 132-39.

must be regarded as an affront to China. Finally he wrote to Secretary of State Blaine:

> "I was not prepared to learn . . . that there was a way recognized in the law and practice of this country whereby your country could release itself from treaty obligations without consultation or consent of the other party . . ."[9]

Meanwhile, the Chinese in the United States had raised a fund of one hundred thousand dollars to test the constitutionality of the act in court. In the Chae Chan Ping case the Supreme Court ruled:

> "It must he conceded that the Act of 1888 is in contravention of the express stipulations of the Treaty of 1868 and of the supplemental Treaty of 1880, hut it is not on that account invalid or to he restricted in its enforcement. The treaties were of no greater legal obligation than the act of Congress. . . . It can he deemed . . . only the equivalent of a legislative act, to he repealed or modified at the pleasure of Congress."[10]

Ostensibly the Scott Act was legislated to rectify some legal defects of the previous act which had been allegedly defeated by fraud and evasion;[11] but after the act went into operation, many difficulties still arose. For instance, as the act applied "only against the return of Chinese who had been to the United States" and did not provide for the transit of Chinese who had not been to the country, the steamers sailing from Havana, Cuba, refused to take Chinese passengers in transit because they were denied even temporary landing at New York.[12] There was no direct means of transportation between Cuba and China.

The defects of the Scott Act and the disputed question as to whether the original exclusion act (which was enacted in 1882 and amended in 1884) expired in 1892 or 1894, had again given the occasion for the introduction of several anti-Chinese bills.

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(9) 51 Congress, 1st session, (1889-90) *House Executive Documents,* vol. 1, No. 1, pt. 1, pp. 119-22, 132-39.

(10) *Chae Chan Ping vs. U. S.,* 130 U. S. 581.

(11) The Scott Act was passed by the House without dehate. In Senate, Senator Butler of Tennessee declared: "It is a game of politics . . . and not a seemly one I must say. But for the fact that we are on the eve of a Presidential election and each party wants to get the vote of the Pacific Slope, this Senate would not he engaged in this dehate." See 50 Congress, 1st session, *Congressional Record,* vol. 19, pt. 7, pp. 8328-43.

(12) 51 Congress, 1st session (1889-90) *Senate Executive Documents,* vol. 5, No. 41, pp. 2ff.

On May 5, 1892, another exclusion act sponsored by Representative Thomas J. Geary of California was passed by Congress.

The Geary Act provided that all laws in force in relation to the exclusion of Chinese were to be continued in force for another ten years, that any Chinese person arrested under the provisions of the act should be adjudged unlawfully in the United States and should be deported, unless such person should establish by affirmative proof to the satisfaction of the justice, judge or commissioner, his lawful right to remain in the United States, that no bail should be allowed to a Chinese person in a habaes corpus case; that all Chinese laborers should apply to the collector of internal revenue for a certificate of residence within one year, and that any Chinese laborer without such certificate after this period might be arrested by any United States customs official, collector of internal revenue, or United States marshal and should be deported, unless he should establish the reasons with at least one credible white witness for his failure to apply for registration.[13]

But the President's signature was scarcely dry when the defects of the new law arising through haste and inconsideration again became apparent. A number of distinguished lawyers pronounced that the Geary Act was repugnant to the Constitution of the United States. On the strength of their opinion the Chinese brought a test case before the Supreme Court, and, at the same time, the Chinese Six Companies of San Francisco advised all Chinese laborers not to comply with the law. In a letter to the collector of internal revenue, the Chinese Six Companies declared:

> "First, the law makes no distinction between Chinese who are aliens and Chinese who are citizens of the United States. A citizen of the Chinese race is entitled to the same rights and privileges as any Caucasian citizens. . . . It is a cardinal principle of constitutional law that all laws in reference to citizens must be equal and uniform in their operation. Secondly, Congress has no power to provide for the deportation of a citizen as a penalty for any crime. Thirdly, the Fifth Amendment of the Constitution provides that no person shall be deprived of life, liberty, or property without due process of law, and the Eighth Amendment provides that cruel and unusual punishment shall not be inflicted. Fourthly, the treaty between the United States and China provides that

(13) *27 Stat. L.*, 25.

> Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities, and exemptions as subjects of the most favored nation."[14]

Chinese Minister Tsui Kwo Yin, who had steadily protested against the Scott Act for its plain violation of the treaty, declared that the Geary Act was worse than the Scott Act, for it not only violated every single article of the Treaty of 1880 but also denied bail, required white witnesses, allowed arrest without warrant and put the burden of proof on the Chinese.[15]

The act requires all Chinese laborers to be registered within one year. On May 15, 1893, eleven days after the time for registration had expired, the Supreme Court rendered a decision that the act was constitutional.[16] There were about 85,000 Chinese laborers out of 106,688 total Chinese in the United States who remained unregistered. It was estimated that, if the law were to be enforced, it would cost $7,310,000 to deport them all and would occupy the time of three judges from twelve to fifteen years. Yet in the act itself there was neither money appropriated for the deportation nor the machinery for executing the law, and a Chinese who was arrested in New York under the act had to be discharged.[17]

In the midst of these difficulties and confusion, a sentiment of reaction was aroused throughout the country. During the second session of the Fifty-Second Congress (1892-93), as many as twenty-three petitions, resolutions and memorials from different public, commercial, and religious organizations in the country were presented asking for the repeal of the Chinese exclusion acts, and during the Fifty-Third Congress fifty-four more were presented for the repeal of the Geary Act.[18] In the chorus of criticism and indignation, several bills were introduced to the same effect, and on November 16, 1893, the McCreary Amendment to the Geary Act was passed by Congress.

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(14) 53 Congress, 1st session, (1893) *Congressional Record,* vol. 25, pt. 2, p. 2443.

(15) 52 Congress, 2nd session, (1892-93) *House Executive Documents,* vol. 1, No. 1, pp. 147-58.

(16) *Fong Yue Ting vs. U. S.,* (1893) 149 U. S. 698; 53 Congress, 2nd session, *House Executive Document,* vol. 1, p. 234.

(17) *In re Ny Look,* C. C. New York, (1893) 56 Fed. 81.

(18) See House and Senate *Journals of the sessions.*

The McCreary Amendment extended six months for registration, substituted "one credible witness other than Chinese" for the "white" witness clause, and redefined the term "Chinese laborers" to mean "both skilled and unskilled manual laborers, including Chinese employed in mining, fishing, huckstering, peddling, laundrymen, or those engaged in taking or otherwise preserving shell or other fish for home consumption or exportation." It also provided that any Chinese person convicted of a felony should be deported and the certificate of residence was required to contain the applicant's photograph.[19]

During the fourteen years following the Treaty of 1880, seven anti-Chinese laws were passed in Congress, with increasing harshness each time.[20] The McCreary Amendment, though its "objectionable provisions are a surprise and disappointment to the Chinese," was passed in a reactionary mood in an attempt at amelioration of an evil. Let it be noted that all of the six acts preceding the McCreary Amendment were passed on the eve of political elections. The McCreary Amendment of 1893, which was the only one that passed in a year of political relaxation and therefore was free from political influence, bore a faint sign of faltering and marked the beginning of the end of the Chinese labor issue in American politics. Since then no new anti-Chinese law has been enacted by Congress. However, the Chinese situation has by no means been ameliorated; on the contrary, it has been even aggravated, not because of additional legislation but by the application and administration of the existing laws.

(19) 28 *Stat. L.*, 7.

(20) Acts of March 23, 1882 (vetoed); May 6, 1882; 1884; September 13, 1888; October 1, 1888; 1892; 1893. All acts were reenacted in 1902 and also in 1904.

V.

THE TREATY OF 1894 AND ITS TERMINATION

On April 17, 1894, a new treaty was concluded at Washington, D. C. It provided that the coming of Chinese laborers to the United States should be absolutely prohibited for ten years. Any registered Chinese laborers who had a lawful wife, child, or parent in the United States or property therein of the value of $1,000, or a debt of like amount should be allowed to return to the United States. The right of Chinese subjects — officials, teachers, students, merchants, travelers for curiosity or pleasure — of coming to the United States and residing therein should not be affected. All Chinese in the United States should have the protection of their persons and property, and should enjoy all the rights of the most favored nation. The treaty should remain in force for ten years.[1]

By this treaty the Scott Act (which provided an absolute prohibition of the coming and returning of Chinese laborers to the United States, regardless of their family relations or property in the country, abolishing of the system of issuing certificates of identity, and a cancellation of all outstanding certificates held by Chinese laborers in China) was repealed. But at the same time the treaty sanctioned, in effect, the acts of 1892 and 1893 for ten years.

The treaty was suggested by the Chinese government in 1893 in an attempt to reach an amiable understanding with the government of the United States. By granting the American government the right to prohibit absolutely the coming of Chinese laborers to the United States, the Chinese government hoped that the situation of Chinese non-laborers coming or residing in the United States might be ameliorated. Contrary to the expectation, after the stoppage of Chinese laborers, the Treasury Department (which was then in charge of immigration)

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(1) 53 Congress, 3rd session, (1894-5) *House Executive Documents,* vol. 1, No. 1, pt. 1, pp. 177-78.

turned its eyes to other classes of Chinese and vigorously prosecuted them as being laborers.

On July 15, 1898, Attorney General Griggs ruled that only Chinese officials, teachers, students, merchants and travelers who were expressly allowed by the Treaty of 1894 to enter the United States were admissible. Immediately the Treasury Department made a regulation denying admission to salesmen, clerks, buyers, bookkeepers, accountants, managers, stockkeepers, apprentices, agents, cashiers, physicians, etc.

This narrowing of the so-called exempt classes produced some curious inconsistencies. For instance, in 1899, the Treasury Department ruled out ministers, preachers, and missionaries, and under this ruling a Chinese, who had entered the United States as a divinity student, was arrested as soon as he began to preach. The court sustained the contention that he was a "laborer" under the law and was deported.[2]

The principle of limitation of classes was carried still further by Treasury definition. Under the regulations of 1900 a student was defined to be "one who intended to pursue some of the higher branches of study or seeks to be fitted for some particular profession. . . ." Under this regulation, a Chinese student, though armed with a certificate viséed by the United States Consul at Shanghai, and vouched for by the Chinese Consul General at New York as a bona fide student, was obliged to return to China because his certificate stated that he came "to study the English language," this being neither a higher branch nor a profession.[3] In his protest against the re-enactment of the exclusion laws, Chinese Minister Wu Ting Fang wrote: "it would sound strange to read in a dictionary of the English language the only definition of a student to be 'one who pursues a supergraduate course and is provided in advance with a competancy'."[4]

Under the treaty of 1894, a registered Chinese laborer, having specific property or relatives in the United States, was permitted to visit

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(2) Coolidge, *op. cit.*, p. 248.

(3) 57 Congress, 1st session, (1901-2) *Congressional Documents,* Series No. 4268, vol. 1, No. 1, pt. 1, p. 83.

(4) *Ibid.*

China, by procuring a return certificate before his departure from the United States. But in executing the law, it was discovered that it might possibly occur that the property which the laborer had in the United States on departing might be dissipated upon his return, and it was contended that a new investigation might be undertaken on the laborer's return, while he was detained in custody at the port of entry. The usual presumption of law as to continuance of statutes were ignored, and the return certificate was reduced to a piece of paper. As a result of this reinvestigation, an overwhelming majority of the return laborers were excluded.[5]

The Treaty of 1894 provided that "Chinese laborers shall continue to enjoy the privilege of transit across the territory of the United States." This privilege was limited in various ways and often denied. For instance, fifty-one Chinese arrived at San Francisco in July, 1901, and sought transit by rail under bond with tickets through to Mexico. Eleven were refused on the grounds that they did not intend to make Mexico their ultimate destination but intended to come back surreptitiously into the United States. A *résumé* of the evidence shows that four spoke English and had undoubtedly been in the United States before, six had American watches, knives, and clothing on their persons and papers containing American addresses, and one was a boy of twelve traveling with his uncle.[6] In August, out of 98 transits, twenty were denied landing for similar reasons.[7]

These are only a few of numerous cases where Chinese had suffered during the so-called "period of Treasury Regulations" in the wake of the Treaty of 1894. The increasing stringency of the Treasury regulations and the abuse of the prejudiced and over-zealous immigration officers had reduced the Chinese to such a miserable situation that no Chinese in or coming to the United States could find himself safe

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(5) Max J. Kohler, *Immigration and Aliens in the United States,* New York, 1936, pp. 259-60.

(6) 59 Congress, 1st session, (1905-6) *House Executive Documents,* vol. 50, No. 847, pp. 80ff.

(7) *Ibid.,* pp. 86-89.

from physical attack,[8] property robbery or deportation, not only by unscrupulous persons but frequently in the name of law![9] In conjunction with the treatment of Chinese by the immigration officers John P. Irish, Naval Officer of Customs at San Francisco, once said:

> "No one need he surprised at these abuses. . . . So completely are these safeguards of human liherty withdrawn that if you, sir, land in San Francisco on a Pacific liner and had an enemy sufficiently virulent and of sufficient influence with some inspector, you could he deported as a Chinese and would find yourself utterly powerless to protect yourself or to make proof to the contrary. It is a most vicious system, and if it had been planned to foster a system of infamous hlackmail, criminal ingenuity could have added nothing further to it."[10]

Before the Treaty of 1880, the persecution of Chinese, however brutal and outrageous it might have been, had been mostly fostered by individuals without the backing of law; after the Treaty of 1880, while the maltreatment of the Chinese by the idlers and the hoodlums had by no means died out, the Chinese had added misfortune viciously imposed upon them under the mask of laws that were enacted ostensibly "to execute certain treaty stipulations" with China.

As a matter of fact, both the treaties of 1880 and of 1894 were aimed only at Chinese laborers. By yielding to the wishes of the American government at first to suspend the coming of Chinese laborers and later to prohibit them absolutely, the Chinese government had naturally expected that Chinese laborers already in the United States would be properly protected and the situation of other classes of

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(8) In 1903, Tom Kim Yung, Attache of the Chinese Legation in Washington, was in San Francisco on duty. One night he was accosted hy a policeman in most indecent language and was struck. He was handcuffed and tied hy his queue to a fence and finally taken to the police station on a charge of assaulting a police officer. When his diplomatic status was identified hy the Chinese Consul General, the officer refused to dismiss the charge. The excuse of the policeman for his conduct was that he mistook the attache for another Chinese for whom he was on the look-out. The attache, being humiliated and unable to secure the dismissal of the charge, committed suicide. The Secretary of State hrought the suhject to the attention of the Governor of California, and the latter to the Mayor of San Francisco, but no redress was given.—See John W. Foster, "The Chinese Boycott," *Atlantic Monthly*, January, 1906. (Foster was Secretary of State under President Harrison in 1892.)

(9) In Octoher, 1903, there was a so-called "Boston Raid" in which several hundred Chinese were arrested in one night. Forty-five of them were deported and many were injured by brutal treatment. In the spring of 1904, there was a similar "raid" in New York.—*Ibid;* Kohler, *op. cit.*, p. 265.

(10) Coolidge, *op. cit.*, p. 262.

Chinese would thus be ameliorated. Unfortunately, both treaties were misused as an authorization for the maltreatment of the Chinese, not only laborers but other classes as well. The Chinese government felt that the Treaty of 1894 had by no means assuaged the hardships of the Chinese and that its continuance in force would undoubtedly be taken by the American government as an acquiescence in its transgressive treatment of the Chinese. After a string of futile protests and at the expiration of the Treaty of 1894, in January, 1904, the Chinese government denounced the treaty. The treaty relations of the two countries, so far as Chinese immigration is concerned, fell back onto the Treaty of 1880. Nevertheless, in reply to China's legitimate action, Congress immediately passed an act that "all laws and regulations, suspending or prohibiting the coming of Chinese persons . . . are hereby re-enacted, extended, and continued without modification, limitation or condition."

VI.

THE INTERPRETATION OF THE TREATY AND THE EXCLUSION LAW

As reviewed in the preceding pages, both the treaties of 1880 and of 1894 were to exclude Chinese laborers from coming to the United States. In pursuance of treaty stipulations the Act of May 6, 1882, as amended in 1884, defined the term "Chinese laborers" to mean "both skilled and unskilled laborers and Chinese employed in mining."

By the Act of November 3, 1893, the words "Chinese laborers" were construed to mean "both skilled and unskilled manual laborers, including Chinese employed in mining, fishing, huckstering, peddling, laundrymen, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation."

Since 1893 the courts have added numerous occupations to the list of Chinese laborers for exclusion: Gamblers and "highbinders,"[1] restaurant proprietors,[2] restaurant and lodging-house keepers,[3] clerks, bookkeepers, assistant accountants,[4] prostitutes,[5] and cooks even though they own an interest in a mercantile firm.[6]

Up to 1898 the treaty and the exclusion laws had been interpreted to admit all classes of Chinese except laborers. Although the words "Chinese laborers" had been loosely described, rather than defined, by legislation, regulation and court decisions to include numerous non-laborers, the principle that only laborers were excluded had been recognized and substantially followed for sixteen years. Since 1898, by the Treasury Department regulations, direction was given to admit only Chinese whose occupation or station was clearly named in Article

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(1) *U. S. vs. Ah Fawn,* (1893) 57 Fed. 591.

(2) *In re Ah Tow* (1894) 59 Fed. 561.

(3) *U. S. vs. Chung Ki Foon* (1897) 83 Fed. 143.

(4) *U. S. vs. Pin Kwan* (1900) 100 Fed. 609.

(5) *Lee Ah Yin vs. U. S.* (1902) 116 Fed. 614.

(6) *Mar Bing Guey vs. U. S.* (1899) 97 Fed. 576.

III of the Treaty of 1894, which was then in force, viz., "officials, teachers, students, merchants, or travelers for curiosity or pleasure," and to deny admission to Chinese persons described as salesmen, clerks, buyers, bookkeepers, accountants, managers, stockkeepers, apprentices, agents, cashiers, physicians, preachers, missionaries, proprietors of restaurants, etc.[7]

This new construction of the words "Chinese laborers" by the Treasury regulation seemed to have been first applied by Judge Ross, of the District Court of California, in 1893, in the case of *U. S. vs. Ah Fawn,* 57 Fed. 591, in which he stated:

> "The history of the negotiations . . . clearly shows that throughout them the United States Commissioners insisted that the words 'Chinese laborers' should include all immigration other than that for teaching, trade, study, travel, and curiosity. . . . It is clear that the words 'Chinese lahorers' employed in the treaty of 1880 are not limited to those who do hard manual work, but that they are broad enough in their true meaning and intent to include Chinese gamhlers and 'highhinders,' and it is manifest that Congress, in passing the act of May 5, 1882, did not use the words 'Chinese laborers' in any narrower sense than were the same words in the treaty under which it was legislating."

On July 15, 1898, Attorney General Griggs ruled:

> "Article V of the Treaty of 1858 recognizing the mutual advantage of free migration 'for purpose of curiosity, of trade, or as permanent residents'—it may he stated comprehensively that the result of the whole body of these laws and decisions thereon is to determine that the true theory is not that all Chinese persons may enter this country who are not forhidden, hut that those are entitled to enter who are expressly allowed. . . . This exempt classification is marked out by the phrase 'officials, teachers, students, merchants, or travelers for curiosity or pleasure'."[8]

In reference to the Attorney General's opinion and to the decision of the Treasury Department of July 21, 1898, to the effect that only the classes of persons expressly named in Article III of the Treaty of 1894 were entitled to admission into the United States, Chinese Minister Wu Ting Fang in a note of November 7, 1898, contended that the object both of the treaties and of the exclusion legislation was to keep

(7) Cf. John Bassett Moore, *A Digest of International Law,* Washington, 1906, vol. IV, pp. 216-217.

(8) 22 *Opinion,* Attorney General, 132,260.

out laborers, and that it never was held by the United States authorities that the enumeration of certain exempt classes should be operated as an exclusion of all other classes and laborers besides.[9]

On January 5, 1900, the State Department replied that the reversal of the previous view was determined upon after careful consideration of all the facts and all the laws of the case and no valid reason could now be perceived for receding from the position taken or modifying the present deliberate view of the Executive. It was added, however, that the question might perhaps be raised judicially and ultimately be brought to the Supreme Court.[10]

The question has never been directly brought up for a test in the court; but judging from the decisions rendered from other cases, this construction of the words "Chinese laborers" has never been approved by the United States Supreme Court, which, in fact, has several times declined to pass on it, using terms indicating doubt as to its correctness,[11] and the doctrine has even been rejected by the Supreme Court, in as far as it applies to the wife and minor children of resident non-laborers. In the case of *U. S. vs. Mrs. Gue Lim*, 176 U. S. 459, the Supreme Court held:

> "There is nothing in the act of 1884 which in terms, enumerates and provides for the admission of particular classes of persons. . . . It is not possible to presume that the treaty, in omitting the name of the wives of those who by the second article were entitled to admission, meant that they should be excluded. . . .
>
> "The purpose of the sixth section, requiring the certificate, was not to prevent the persons named in the second article of the treaty from coming into the country, but to prevent Chinese laborers from entering under the guise of being one of the classes permitted by the treaty. It is the coming of Chinese laborers that the act is aimed against."

It is clear that both the treaties and the acts were aimed against the coming of Chinese laborers only, and the enumeration of certain classes of Chinese in the treaties were evidently intended to be merely illustrative. Article I of the Treaty of 1880 granted China's consent to legislation by the United States "regulating, limiting or suspending the coming of Chinese laborers"; to make the assurance doubly sure

(9) 56 Congress, 1st session, (1899-1900) *House Documents*, vol. 1, No. 1, pp. 189-195.
(10) *Ibid.*, pp. 197-200.
(11) *Chew Hong vs. U. S.*, 112 U. S. 536, 542-543; *U. S. vs. Jung Ah Lung*, 124 U. S. 621.

as to the scope of the classes to be restricted, it was expressly stated that the limitation "shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitation." To assume that Article II of the Treaty of 1880, which enumerates certain classes of Chinese to be accorded the rights, privileges, and immunities of the most favored nation, was intended to limit further the classes of Chinese who were expressly declared to be "not included in the limitation" was to give the words a meaning directly opposite to that which they were designed to convey and was, therefore, a violation of the treaty itself.

Apparently the warrant for the construction of the words "Chinese laborers" as to include all non-laborers not enumerated in the terms of "teachers, students, merchants and travelers for curiosity or pleasure" is not to be found in the treaty, and hence Judge Ross sought it in the report of the United States Commissioners and held that it was the true intention of the framers of the treaty.

As has been reviewed in the preceding pages, the treaty of 1880 was a result of mutual concession and compromise. Though the American Commissioners insisted upon defining "Chinese laborers" to include all classes other than teachers, students, merchants, and travelers for curiosity or pleasure, and the Chinese Commissioners also urged to except artisans from the labor class, when the treaty was agreed upon, both sides had made concessions. It clearly provides in Article I that "the limitation or suspension shall be reasonable and shall apply to Chinese who may go to the United States as laborers, other classes not being included in the limitation." Nevertheless, in a letter of November 6, the United States Commissioners, giving their own inferences and conclusion, reported to the State Department:

> "We desired, as you will see hy the précis of the negotiations, to define with more precision exactly what all the negotiators on both sides understood by 'Chinese laborers.' But the Chinese government was very unwilling to he more precise than the ahsolute necessity called for, and they claimed that in Article II they did hy exclusion provide that nohody should he entitled to claim the benefit of the general provisions of the Burlingame Treaty hut those who went to the United States for purposes of teaching, study, mercantile transaction, travel or curiosity. We have no doubt that an act of Congress excluding all hut these classes, using the words of the treaty, would he fully warranted hy its provisions, and as this was a clear and sufficient modification of the sixth article of the Burlingame Treaty we did not feel authorized to

> risk such a concession by insisting upon language which would really mean no more, and which was entirely unacceptable to the Chinese government."[12]

It should be noted that what warrant there could have been for the claim that Article II was regarded by the Chinese government as an exclusive enumeration does not appear from any other published document than the American Commissioners' ex-parte report. This report, dated November 6, in which a full account of the negotiations between November 3 and 6 was promised for the next mail, merely gave the Commissioners' own inference and conclusion without going into details. The details of the intervening negotiations between November 3 and the agreement, which was said to have been furnished to the State Department from time to time, do not seem to have been compiled in the "Foreign Relations" of the Congressional documents, and we have no "précis of the negotiations," such as furnished for the earlier conferences. Such inference, as seen, is inconsistent with the avowed purpose of both sides as to the limitation of Chinese laborers and the history of the negotiations. The United States Commissioners should have been aware of the fact that both sides had made concessions, and that the Chinese government "was very unwilling to be more precise than the absolute necessity called for." Nor is it an admissible theory in diplomatic practice that the American Commissioners could have believed that China was proposing to bind herself by what her negotiators were claimed to have said, but declined to insert in the treaty, or that they had any authority to bind China by such alleged admission.

Mr. Chester Holcombe, the Secretary of the Commission and Joint-Interpreter, whose comment on the treaty would seem to be the final authority, in an article published in "The Outlook" on July 8, 1905, said:

> "To the authorities and people of China our regulations upon this subject have appeared all the more unjust, inexcusable and unnecessary because of the fact that . . . in the Chinese text of the original treaty the right granted to regulate, limit and suspend immigration is confined in specific terms to the 'kung' (laborers) alone, natives of the other three classes being guaranteed freedom to enter or leave this country at their pleasure, and assured of all the rights and privileges granted to aliens of any other nationality while here."

(12) 57 Congress, 1st session, (1881-82) *Senate Executive Documents,* "Foreign Relations," vol. 1, pt. 1, pp. 190-98.

VII.

THE NEW BASIS OF EXCLUSION

Without stopping to see that the exclusion of Chinese non-laborers is inconsistent with treaty stipulations, the development of American immigration policy following the First World War has rendered the exclusion of Chinese still more stringent and obnoxious. The exclusion of Chinese reached the climax in 1904 when Congress re-enacted and continued all existing Chinese exclusion laws and extended them to the insular possessions of the United States unconditionally and without time limits. Since that time, because of the advent of Japanese immigration, the Chinese question has submerged into a new policy of Oriental exclusion.

Japanese immigration to the United States began in the late nineties. While Chinese immigration was mainly male enterprise and individual initiative, the Japanese followed their national policy of bringing their wives to the United States and establishing their homes here. Attention gradually shifted from the question of labor competition, immediately and ultimately, to the questions of assimilation and amalgamation.[1]

This new emphasis on race discrimination rather than economic competition was at first embodied in the Immigration Act of 1917 whereby the natives of certain territories in continental Asia and adjacent islands, the so-called barred zone, are excluded. And finally, by section 13 of the Immigration Act of 1924, all aliens ineligible to citizenship are excluded. This new emphasis on the basis of ineligibility to citizenship has radically changed the early viewpoint with reference to group attitude and further complicated the question.

Two statutes of the United States deprive Chinese of the right to become American citizens, namely, the naturalization law and the Chinese Exclusion Law. The former applies to Chinese as well as to some other Asiatics, and the latter applies to Chinese only.

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(1) Cf. Roderick D. McKenzie, *Oriental Exclusion*, The University of Chicago Press, 1928, p. 15.

Prior to the legislation of the Chinese Exclusion Act of 1882, the legality of admitting Chinese to citizenship seemed to have been subject to a diversity of interpretation of the naturalization law. According to records, at least, a Chinese was naturalized in New York in 1873 and thirteen Chinese applied for citizenship in California in 1876.[2] But in 1878, a Chinese by the name of Ah Yup was denied naturalization by the Circuit Court in San Francisco. In this case Judge Sawyer ruled, in effect, that the naturalization law "shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent"; that a native of China, of the Mongolian race, was not a white person within the meaning of the term of the naturalization law and was, therefore, not entitled to become a citizen of the United States; and that Congress retained the word "white" in the naturalization act of 1870 for the sole purpose of excluding Chinese from the right of naturalization.[3]

In view of the history of the American naturalization law it is difficult to comprehend that the term "free white persons" was intended to exclude Chinese from becoming American citizens. The first American naturalization law, enacted March 26, 1790, provided that "any alien, being a free white person . . . may be admitted to become a citizen" of the United States. Between 1790 and 1854 Congress passed fifteen laws dealing with naturalization. In each case the phrase "free white person" was retained without discussion. At the close of the Civil War the naturalization law was amended to bring it into harmony with the principle established by that war. By the Act of July 14, 1870, section 7 of the naturalization law was "extended to aliens of African nativity and to persons of African descent."

Curiously enough, prior to the Ah Yup case of 1878, there was no decision construing the term "white person" so as to exclude Chinese, but many decisions on the statute concede that when this term was originally used in the naturalization law of 1790, yellow race had not migrated to the United States, and that the legislators had in mind merely Negroes and Indians, as distinguished from the rest of the population roughly described as "white persons."[4]

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(2) Gulick, *op. cit.*, pp. 34-35; Moore, *op. cit.*, vol. 3, p. 330; *In re Gee Hop*, 71 Fed. 274.
(3) *In re Ah Yup* (1878) 5 Sawyer 155.
(4) 7 *Opinion*, Attorney General 746; *In re Rodriguez* (1891), 81 Fed. 337.

In the Ah Yup case, the court ruled that Chinese, being of the Mongolian race, were not white persons and, therefore, not eligible for naturalization. However, this ruling, though it has since been effective insofar as it denies Chinese the right of naturalization, has not been followed by other courts when applied to other peoples of Mongolian and Asiatic origin. Professor Raymond Leslie Buell pointed out:

> "We call Chinese and Japanese 'Mongolian' but some courts naturalized Lapps, Finns, Cossacks, Magyars, Syrians, Turks, Armenians, Parsees, and Bulgarians, all of whom are of Asiatic or Mongolian origin. According to other courts, ten million Filipinos, including the Moros, are eligible to citizenship. . . . The twelve thousand Chamorros inhabiting our possession of Guam and Mexican half breeds may likewise acquire American citizenship."[5]

However, in the opinion of some American jurists, a distinction should be made between the Chinese case and that of other aliens ineligible to citizenship. The ineligibility of Japanese to citizenship, for instance, has been entirely based on the naturalization law which excludes them from the "white person" category.[6] In regard to Chinese, as Judge Max J. Kohler once said, "the right of naturalization has been expressly withheld by treaty, beginning with Article VI of the Burlingame Treaty of 1868 and the Act of 1882."[7]

Section 14 of the Act of May 6, 1882 prohibits all courts from admitting Chinese to citizenship. The insertion of the non-naturalization provision in the so-called Chinese Exclusion Law was said to have been based on Article VI of the Burlingame Treaty which reads in part:

> ". . . Nothing herein contained shall be held to confer naturalization upon citizens of the United States in China or upon the subjects of China in the United States."

In view of the circumstances under which the Burlingame Treaty was concluded, the non-naturalization clause was perhaps inserted with an eye to the stringent law in China against expatriation and with the other eye to the apprehension of the Pacific Coast toward Chinese colonization. Nevertheless, as Senator Ingalls rightly pointed

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(5) Buell, "May Japanese Become Citizens?" *Forum*, September, 1924.

(6) *Ozawa vs. U. S.* (1922) 260 U. S. 178.

(7) Kohler, *op. cit.*, p. 393.

out, "That section simply declared that the treaty should not be held to confer naturalization and not that they might not be naturalized."[8]

Article V of the Burlingame Treaty provides:

> "The United States of America and the Emperor of China cordially recognize the inherent and inalienable right of man to change his home and allegiance. . . ."

The treaty was concluded on July 28, 1868. One day before, Congress declared that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of life, liberty, and the pursuit of happiness."[9] Expatriation, as interpreted by Attorney General Black, includes not only emigration, but also naturalization.[10] To hold that Article VI of the Burlingame Treaty deprives Chinese of the right of naturalization not only violates the very treaty stipulations recognizing man's right to change his home and allegiance, but also contradicts the statutory declaration in favor of man's right of expatriation. Furthermore, should Article VI of the Burlingame Treaty be interpreted to withhold the right of Chinese to become American citizens and *vice versa*, it is extremely doubtful whether, under the American Constitution, the executive department has the right to deprive its citizens of the right of expatriation in contradiction with Congressional legislation, which is a supreme law of the land!

(8) 47 Congress, 1st session, (1882) *Congressional Record*, vol. 13, pt. 2, p. 1746.

(9) 15 *Stat. L.* 223.

(10) 9 *Opinion*, Attorney General, 356.

VIII.

CONCLUSION

Immigrants have been the makers of the United States of America. Chinese are not migratory people. In the total volume of American immigration the Chinese formed a negligible segment, but the attention they have commanded has been far out of proportion to their numbers, and the manner in which they have been treated in a friendly nation is utterly astounding. At first, when California was in a rustic condition, the Chinese were induced to come to supply a pioneer demand for unskilled labor. They were more than tolerated. As the region passed from a pioneer to a settled condition, the human material that was once of value became a source of annoyance and trouble, and anti-Chinese sentiment emerged.

Diverse motives entered into the anti-Chinese sentiment in California. Fundamental to all of them was race antipathy engendered by monopolistic desire bred by pioneer conditions. Under the cry "California for Americans" the principle of "nativism" found numerous adherents in California, and "the Chinese must go" became popular persuasion among the white argonauts.

In true frontier fashion Californians took the law into their own hands and attempted to rid the state of the Chinese by local measures. Three causes were chiefly responsible for the widely spread violence against the Chinese.

First, the Chinese derived no protection from their own government. In the early days the Chinese who left their homes were regarded as rash and desperate, and their departure from the country was discouraged or ignored by the imperial government. For nearly forty years after the treaty relations had been established between China and th United States and more than thirty years after the coming of the first Chinese to the United States, China did not send a diplomatic representative to the United States. Hence, during the first thirty years, one hundred thousand Chinese in the United States had entirely forfeited any protection from the Chinese government. At the

advice of the American government a legation was established in Washington and a consulate at San Francisco in 1878. But in the meantime Chinese national prestige was at its lowest ebb after repeated foreign invasion and her diplomats were not received with proper respect. Numerous protests made by the Chinese ministers to the State Department were frequently ignored without the courtesy of acknowledgment. Such an attitude of the American government undoubtedly gave the demagogues much encouragement to believe that the attack on Chinese would not result in any international complication.

Second, the Chinese were deprived of the right to vote. As early as 1856 the Foreign Miner's License Tax Law of California imposed a tax of $4 per month on each alien miner who had not declared his intention to become an American citizen or who was "ineligible to become a citizen of the United States." Though there was no legal ground until 1878 to claim that Chinese were ineligible to citizenship, they were, nevertheless, prevented from becoming American citizens.[1] Thus they were deprived of the only weapon which could protect them against lawlessness and local discriminatory legislation.

Third, the Chinese were denied the right to testify for or against white men in courts. Originally, the law was enacted against Indians and Negroes, but in 1854 Chief Justice Murray of the California Supreme Court ruled that in the days of Columbus all shores washed by Chinese water were called the Indies, therefore all Asiatics were Indians.[2] Justice Murray was a member of the Know-Nothing Party which was one of the foremost anti-Chinese organizations.[3] The decision was most outrageous because it gave the green light to the unscrupulous elements to attack the Chinese with impunity, and, therefore, was responsible for numerous physical attacks, property robberies, and wanton slaughter of Chinese for almost a generation until the law was revised in 1873, as a result of the Civil War.

Although the Workingmen's Party under Dennis Kearney was dissolved after the return of prosperity in California in the early eighties, organized labor in California continued to be the dominant influence

(1) Representative Johnson of California declared in the House: "You will never franchise Chinamen. . . . I know California and I know that the army and navy are too small to protect the Chinese voters in that state." See 41 Congress, 2nd session, (1869-70) *Congressional Globe,* pt. 1, p. 752.

(2) *People vs. Hall,* (1854) 4 Cal. 399.

(3) Huhert H. Bancroft, *California Inter Pocula,* San Francisco, 1888, pp. 605-607.

in state politics until the late nineties. Meanwhile, the national political situation was such that during the last quarter of the century two presidents were elected by minorities in popular votes and two others by majorities of less than twenty-five thousand, and that the control of both the presidency and the two houses of Congress shifted frequently between the two major parties. Under these conditions the votes of the Pacific Coast states came to be looked upon as of crucial importance, giving these states tremendous bargaining power in political campaigns. That is why all Chinese exclusion laws except one were legislated in election years.

Orgnized minorities, however numerically small they might be, taking advantage of the close race of election between the two parties, and taken by politicians for their own ends, were sufficient to change the policy of a nation and to commit the United States to a race discrimination at variance with the professed theory of the government and to a violation of its international treaty.

This minority politics is not an unusual phenomenon in the history of the United States Congress. Therefore, it would be a mistake if we were to think that the exclusion of Chinese reflects the majority opinion of the United States. Unfortunately, though the anti-Chinese agitation represents only a minority opinion in a few Pacific Coast states, the majority of the American people have not made any attempt to ameliorate the situation, though the so-called Chinese labor issue has been dead half a century.

Before the eighteen-nineties the major problem of American national economy had been one of production in which the labor issue was naturally predominant. After the far west reached a mature stage of development, over-production resulted in a problem of distribution in which the anti-monopolistic agitation eclipsed that of labor competition. Since the late nineties, the Chinese labor issue has gradually become a worn-out tool of practical politics. The national platforms of 1896 and 1900 of both the Democratic and the Republican Parties made only slight reference to general immigration. In the 1904 election the platform of the Democratic Party in California dropped the Chinese plank for the first time in history and the Republicans dismissed it with a line. Since then no anti-Chinese cry has been heard in American politics and no hostile legislation has been passed by Con-

gress, but the Chinese question is not ended and the post war American immigration policy has added new offense to the Chinese.

It is said that the present immigration act which was enacted in 1924 is one of regional discrimination: natives of American countries are admitted freely except undesirable classes; Europeans, West Asiatics and Africans are admitted upon the quota basis; and East Asiatics are excluded. It distinguishes between Europeans and Americans as well as between Asiatics and Europeans. It is not aimed exclusively against Chinese but against Asiatics as a whole.

However, it should be pointed out that admission on the quota basis is a policy of quantitative restriction which does not involve the mental attitude. Exclusion discriminates in a manner that is offensive to the racial and national dignity of the group excluded, especially when the exclusion is based on the principle of "ineligibility to citizenship" which conveys the obnoxious implication that the people excluded are biologically inferior!

China is not a migratory nation. She has consented to the request of the American government restricting the coming of Chinese laborers. She has not objected to the general immigration laws imposing restrictions upon her citizens. But as a nation of nearly five thousand year civilization she does resent the implication of inferiority! It is absolutely irreconcilable with her revolutionary principle of freedom and equality which was enunciated by Dr. Sun Yat-sen in his will and endorsed by the whole nation, and for which the present war with Japan is fought. Now the United States and China are among the United Nations fighting hand in hand for the common cause. It goes without saying that if such laws as exclusion of Chinese were allowed to continue that would constitute a constant cause of friction between China and the United States, and also reduce China's confidence in America's sense of justice as well as her hope of a better world after the war.

From a materialistic standpoint such laws as exclusion of Chinese do not serve any practical purpose. The Immigration Act of 1924 is also called the Quota Law which provides admission, as quota immigrants, of persons up to the quotas from each country determined so as to admit a total of 150,000, distributed according to the proportion of the number of inhabitants in continental United States in 1920 having that national origin. The total number of Chinese in the United

States in 1920 was 61,639 which is less than the annual quota of 65,721 allowed to Great Britain. According to the proportion the annual quota for Chinese would be only 87. Since the minimum quota is 100, the nominal quota allowed to Chinese is 100. But at present the quota does not apply to Chinese because they are ineligible to citizenship.

The "ineligibility to citizenship" is now the fundamental issue of Chinese exclusion. The Chinese labor question is dead. Most provisions of the Chinese exclusion laws have been either superseded or incorporated by the more stringent and more comprehensive immigration laws. Except a few provisions, such as "section-6 certificate" and "ports of entry," the so-called Chinese exclusion laws have practically become nullified. Therefore, the repeal of Chinese exclusion laws would not change the Chinese situation materially.

The only important issue now between China and the United States is the non-naturalization of Chinese. If the laws were amended so as to admit a negligible number of Chinese on the same quota basis as Caucasians and Negroes and allow them to be eligible for naturalization, all problems of Chinese exclusion would be satisfactorily settled.

It goes without saying that the admission of such a negligible number of Chinese immigrants would not conceivably affect the United States socially or economically; nor has China anything material to gain. The significance of the question is not resting on the number of Chinese immigrants that should be admitted; it is the principle involved. China does not seek any special interests or privileges from the United States. What she expects is the proper recognition that she earns and deserves.

In view of these facts and of the ever increasing close relationship and understanding between the two nations, especially the recently gratifying gesture of the American Government in relinquishing extraterritorial rights in China, I am confident that the time is at hand when the United States Government will not hesitate to treat Chinese on an equal footing with other Europeans and Africans in a spirit of reciprocal and sincere friendship, and with entire justice. However, this is a challenge to American statesmanship.

MEMORANDUM

on

THE ADMISSIBILITY OF CHINESE TEACHERS TO UNITED STATES

I.

TREATY PROVISION

Article II of the treaty of 1880 between China and the United States provides:

> "Chinese subjects, whether proceeding to the United States as teachers, students, merchants or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation."

II.

ADMISSIBLE UNDER CHINESE EXCLUSION LAW

On May 6, 1882, Congress passed an act entitled "An Act to Execute Certain Treaty Stipulations Relating to Chinese." The act is commonly referred to as a "Chinese exclusion law," section 6 of which reads:

> "That in order to the faithful execution of the provisions of this act, every Chinese person, other than a laborer, who may be entitled by said treaty or this act to come within the United States . . . and that such a person is entitled by this act to come within the United States."

Up to 1898 the treaty had been interpreted to admit all classes of Chinese except Chinese laborers. On July 15, 1898, however, Attorney General Grigg ruled:

> "The true theory is not that all Chinese persons may enter this country who are not forbidden, but that those are entitled to enter who are expressly allowed. . . . This exempt classification is marked out by the phrase 'officials, teachers, students, merchants, or travelers for curiosity or pleasure'." (22 *Opinion,* Attorney General, 132, 260.)

In 1936, the Secretary of State, "on the recommendation of the Secretary of Labor, under the authority of section 24" of the Immigration Act of 1924, issued a pamphlet entitled *Admission of Chinese into the United States* in which the admissibility of the classes of Chinese is prescribed:

> "The laws forbid the coming of Chinese lahorers to the United States and are held to allow the entry of only the following classes of Chinese: teachers, students, merchants, travelers — commonly referred to as the 'exempt' classes because of their specified exemption from exclusion." (The Department of State, Immigration Series No. 3, effective October 1, 1936, pp. 1-2.)

It is noted that this ruling was made on the recommendation of the Secretary of Labor, under the authority of the Immigration Act of 1924. It clearly states that Chinese teachers are allowed to enter the United States because they belong to one of the "exempt classes" specifically exempted from exclusion under "the laws."

III.

THE DEFINITION OF CHINESE TEACHERS

In the same pamphlet the term "Chinese teachers" is defined as follows:

> "NOTE 11. *Definition of exempt classes.* The following definition will govern consuls in verifying the exempt status claimed hy visa applicants:
>
> "*Teachers:* A teacher is a person who has a definite engagement to teach and suitable qualification hy education and experience to fill such a position. The term 'teacher' is given a hroad meaning to include ministers and missionaries of religious denominations, newspaper editors, and other public instructors not engaged in school work." (*Ibid.*, p. 7.)

IV.

DENIED ADMISSION BY THE IMMIGRATION ACT OF 1924

However, disregarding the treaty stipulation and the ruling of the State Department made under the authority of the Immigration Act, Chinese teachers are denied admission by the immigration authorities

on the grounds that they are not admissible under section 13(c) of the Immigration Act of 1924, which provides:

> "No alien ineligible to citizenship shall be admitted to the United States has been, and who seeks to enter the United States solely for under the provisions of subdivisions (b), (d), or (e) of section 4. . . ."

Section 4(d) of the act reads:

> "An immigrant who continuously for at least two years immediately preceding the time of his application for admission to the United States unless such alien is admissible as a non-quota immigrant the purpose of, carrying on the vocation of minister of any religious denomination, or professor of a college, academy, seminary, or university; and his wife, and his unmarried children under eighteen years of age, if accompanying or following to join him. . . ."

In the opinion of the Attorney General and of the United States Supreme Court, Chinese applying for admission are subject to examination under immigration law as well as under "Chinese exclusion law." (24 *Opinion*, Attorney General, 706; 223 U. S. 67) This joint application may be interpreted that Chinese, although admissible under the "Chinese exclusion law," shall not be admitted if he is not admissible under the immigration law, and *vice versa*. Therefore, in the opinion of the immigration authorities, Chinese teachers are no longer admissible because they are excluded by section 13(c) of the Immigration Act of 1924.

V.

TREATY RIGHTS UPHELD

However, it should be pointed out that the right of Chinese teachers to enter the United States is expressly provided by the treaty of 1880. Both immigration law and "Chinese exclusion law" may be applicable insofar as they do not violate treaty rights. In this case the question is not whether one law supersedes the other, but whether the treaty is valid.

It is conceded that, under the American system of government, treaty may be "repealed or modified" by act of Congress. (*In re Chae*

Chan Ping, 130 U. S. 581) That is to say that Congress may suspend a treaty from becoming supreme law of the land, although it cannot relieve its international obligation committed by the executive department. But this case is different. The Immigration Act of 1924 is general legislation which does not and has not repealed the treaty of 1880. The question was definitely settled by the United States Supreme Court in 1925 in the case of *Chuang Sum Shee vs. Nagle*, 268 U. S. In this case the alien Chinese wife and children of a resident Chinese merchant were denied admission in 1924 under the present Immigration Act. The Labor Department contended that they were aliens ineligible to citizenship, and, therefore, were excluded by section 13(c) of the Immigration Act of 1924, and that they were also excluded by section 5 of that act which provides that "An alien who is not particularly specified in this act as a non-quota immigrant . . . shall not be admitted . . . by reason of relationship to any individual who is so specified." The Labor Department further insisted that "even treaty rights cannot prevail against the language of the Immigration Act of 1924."

In spite of the strong opposition of the Labor Department to the admission of the Chinese, the Supreme Court ruled on May 25, 1925:

> "The wives and minor children of resident Chinese merchants were guaranteed the right of entry by the treaty of 1880 and certainly possessed it prior to July first (1924) when the present immigration act became effective. The act must be construed with the view to preserve treaty rights unless clearly annulled, and we cannot conclude that, considering its history, the general terms therein disclose a congressional intent absolutely to exclude petitioners from entry. . . ."
>
> "Nor do we think the language of section 5 is sufficient to defeat the rights which petitioners had under the treaty."

It is clear that alien Chinese wives and children of Chinese merchants are not admissible under the Immigration Act of 1924, but they are admitted under the treaty of 1880. Therefore, it seems safe to conclude that the Immigration Act of 1924 does not repeal the treaty of 1880, and should be interpreted in accordance with its terms. In the light of this Supreme Court decision, I conceive of no reason why the right of Chinese teachers to enter the United States cannot be protected by the same treaty.

MEMORANDUM

on

THE ILLEGAL TREATMENT OF CHINESE SEAMEN AT THE PORTS OF THE UNITED STATES*

I.

CHINESE SEAMEN ADMISSIBLE

There is no law of the United States prohibiting a Chinese seaman from landing at a port of the United States. He is not excluded under the so-called Chinese exclusion laws and is admissible as non-immigrant under subdivision 5 of section 3 of the Immigration Act of 1924.

II.

CHINESE EMPLOYED ON A VESSEL OF AMERICAN REGISTRY

A Chinese seaman who is employed on a vessel of American registry is considered as if he were in the United States (48 Congress, 1st session, Senate Document, series No. 2165, vol. 4, No. 62) and, therefore, is entitled to the protection of the Fifth Amendment of the American Constitution which says that no person shall be deprived of his liberty without due process of law.

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* On April 11, 1942, twelve Chinese seamen who had heen cooped up ahoard an United Nations freighter at a Brooklyn pier, staged a demonstration in the captain's cahin during which a Chinese seaman, Ling Young-chai, was shot and killed hy the captain. This unfortunate incident, which is only one of numerous similar cases that have happened in the American ports, is an outgrowth of the practice of wholesale detainment of Chinese seamen in American ports, contrary to law. The memorandum was suhmitted to Amhassador Hu Shih for his consideration on April 20. After the negotiations between Dr. Liu Chieh, Minister-Counselor of the Chinese Embassy and Mr. Marshall E. Dimock of the War Shipping Administration, an agreement was reached on July 11, whereby Chinese seamen are granted shore leave, hut, according to Mr. Dimock's letter to the Emhassy, dated July 11, "if the Chinese seamen do not comply with the conditions of shore leave granted them and fail to reship, it will he necessary for the United States Government to again adopt a more rigid policy in regard to the shore leave."

Furthermore, under the American navigation laws, he is entitled to certain privileges, including that of being returned to the United States when discharged in a foreign port on account of illness or injury or when he becomes destitute under certain circumstances in foreign countries. (Cf. The Immigration Rules and Regulations of January 1, 1930, Rule 7, Subdivision J, Paragraph 1)

III.

CHINESE SEAMEN EMPLOYED ON VESSEL OF FOREIGN REGISTRY

A Chinese seaman who is employed on a vessel of foreign registry is subject to the Immigration Act of 1924 and to the Immigration Rules and Regulations of January 1, 1930, regarding alien seamen.

Subdivision E(6) of Rule 7 of the Immigration Rules and Regulations of January 1, 1930, provides:

> "An alien seeking to enter the United States pursuant to the provision of subdivision (5) of section 3 of the Immigration Act of 1924 shall establish to the satisfaction of the proper immigration official at the port of arrival (1) that he is a bona fide seaman; (2) that his name appears on the duly visaed crew list of the vessel on which he arrives; (3) that he is an employee of such vessel and in good faith signed on her articles; (4) that he seeks to enter solely on business of such vessel, or that he seeks to enter solely in pursuit of his calling as a seaman; and (5) that he has no intention to abandon such calling as a seaman; and where such immigration official is not so satisfied he shall order the owner, charterer, agent, consignee, or master of the vessel on which such alien arrives to detain such alien on board and deport him in the manner required by law. . . ."

Section 20(a) of the Immigration Act of 1924 provides:

> "The owner, charterer, agent, consignee, or master of any vessel arriving in the United States from any place outside thereof who fails to detain on board any alien seaman employed on such vessel until the immigration and naturalization officer in charge at the port of arrival has inspected such seaman (which inspection in all cases shall include a personal physical examination by the medical examiners), or who fails to detain such seaman on board after such inspection or to deport such seaman if required by such immigration and naturalization officer or the Secretary of Labor to do so, shall

pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000 for each alien seaman in respect of whom such failure occurs. . . ."

IV.

GROSS DETAINMENT ILLEGAL

It is clear that, under the immigration law and rule, a Chinese seaman arriving at an American port is allowed to land in pursuit of his calling as a seaman. He may be detained, however, if he fails to establish his status as a bona fide seaman, to the satisfaction of the immigration officer in charge. The owner, charterer, agent, consignee, or master of the vessel is held responsible to detain all alien seamen pending the inspection by the immigration and naturalization officer, or to detain such seamen who are rejected in entering the United States by the immigration officer.

Contrary to the law and rule, no Chinese seaman has been allowed to enter the United States since 1922 (save some extremely exceptional cases) regardless of whether he is employed on an American vessel or a vessel of foreign registry. Such an unjust treatment of Chinese seamen is evidently in contradiction to both the international law and the law of the United States.

V.

DESERTION CHARGE UNJUSTIFIED

It is contended that the detainment of all Chinese seamen on board is a necessary measure to prevent them from desertion. In the last three decades, numerous Chinese seamen were alleged to have deserted their vessels and remained in the United States illegally. In September of 1921, by the order of the Secretary of Labor, a $500 bond was required for each Chinese seaman to go on shore. But in 1922 it was abandoned because two hundred Chinese seamen were reported to have forfeited their bonds during the year. Since then no shore-leave has been granted to a Chinese seaman arriving at American ports. (Cf. Annual Report of the Secretary of Labor, 1922)

The number of Chinese seamen deserting each year, as reported by the Labor Department, ranged from 111 in 1931 to 697 in 1921. This is a very small fraction of thousands of Chinese seamen employed on American and foreign vessels arriving at American ports each year, a number quite negligible as compared with thousands of other alien seamen remaining in the United States illegally.

However, it should be pointed out that the question here is not whether Chinese seamen are inclined to desert their vessels, but whether they should be punished before the desertion is committed. Should any Chinese seaman desert his vessel he could be apprehended and punished according to law. There are many laws of the United States to deal with such cases. The fundamental principle of the common law is that "A person is assumed to be innocent until and unless the contrary is proved," and "No punishment shall be imposed upon a person until judgement is rendered by a court of law." Therefore, to detain all Chinese seamen on board without any legal ground is entirely unreasonable and illegal.

VI.

TREATMENT DISCRIMINATORY AND INHUMANE

It should also be pointed out that no such wholesale detainment has been imposed upon alien seamen of other nationality, in spite of the fact that thousands of other alien seamen have deserted their vessels. The discriminatory treatment against the Chinese is wholly unjustified and prejudiced. Moreover, in view of the present international situation, wholesale detainment of Chinese seamen on board is even more tragic and inhumane. No end of the war is in sight, and no date of departure can be anticipated. Hundreds, perhaps thousands, of Chinese seamen are now on board vessels stranded at American ports. Herded in small cabins, kept in submission under the pistol point of the captains, and under the vigilance of the Coast Guardsmen, they are virtually imprisoned for the duration, a treatment even worse than enemy nationals who are confined in camps more comfortably provided by the American government. For the sake of humanity, these Chinese seamen deserve some sympathy and consideration from the government as well as the people of the United States, to say nothing of the law and justice.